HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No.494 of 2004

(Under Order 43, Rule 1 (r) r/w Section 151 CPC

1. Harvinder Singh S/o Shri Begraj Singh,
2. Harjinder Singh S/o Shri Begraj Singh
3. Satendra Singh S/o Shri Begraj Singh,
4. Smt. Roopwati wife of Shri Begraj Singh
   All r/o village Dandera, Pargana and Tehsil Roorkee,
   District Haridwar.

… Plaintiff- Appellants.

Versus

1. Vikram Singh, S/o Shri Jai Singh,
   R/O village Dandera, Pargana and Tehsil Roorkee,
   District Haridwar.
2. Devraj son of Shri Mehar Singh
   R/o House No.- 64, Sharda Nagar, Jwalapur, Pargana Jwalapur,
   Tehsil and District Haridwar.

… Defendant- Respondents.

Sri A.K. Sharma, learned counsel for the appellant.
Sri Lokpal Singh, learned counsel for the respondents.

Date April 24,2006.
Hon. B.S.Verma, J.

This appeal is directed against the order dated 5-11-2004 passed by the Additional District Judge, I F.T.C. Roorkee, district Haridwar, in Original Suit No. 61 of 2003, Harvinder Singh and others Vs. Vikram Singh and others, whereby the learned trial court has dismissed the application for ad interim injunction (6-C) moved by the plaintiffs in the suit on the ground that the plaintiffs have failed to make out a prima facie case in their favour.

Relevant facts of the casse are that the appellant-plaintiffs filed a suit for permanent injunction against the respondents, which was registered as Original Suit No. 61 of 2003 before the trial court with the averment that the plaintiffs are residents of village Dhandera, Tahsil Roorkee. The defendant No. 1 is the co-tenure holder in Khat No. 197, Kahasra No. 153/2 M. area 1-767 hectare and plaintiffs and defendant no.1 are joint

Khatedars. According to the plaintiff, the defendants are influential persons and they forcibly want to cut popular trees grown by the plaintiffs and defendant no.1 over the disputed land. The defendant no.2 in collusion with defendant no.1 wants to cut the trees and take possession thereof. The plaintiffs filed affidavit in support of their claim.

The defendant no.2 filed objection supported by affidavit alleging that the defendant no.2 had purchased the half share of defendant no.1 by auction and sale certificate was issued by the Tahsildar concerned and he has taken possession over the disputed land and boundaries have also been demarcated. After demarcation, the defendant no.2 had grown the trees. It has been stated that the answering defendant is owner in possession of the suit property and the plaintiffs have filed the suit on false ground.

The plaintiff-appellants filed rejoinder and denied the private family partition between the father of the plaintiffs and defendant no.2 and alleged that the trees were cut after temporary injunction. On the other hand, the defendant no.1 by way of his objection has tried to support the case of the plaintiff indirectly.

The learned trial Court after perusing the documentary evidence on record, found that the name of the defendant no.2 was recorded in the revenue records as co-tenure holder and it was proved that defendant no.2 purchased the disputed property in auction sale. The Trial Court has observed that when according to the plaintiffs, the land relates co-tenure holders, it was open to them to bring a suit for partition. Ultimately, the application for ad interim injunction was dismissed. Aggrieved, by the order dated 5-11-2004, the plaintiffs have come up in appeal.

I have learned counsel for the parties and perused the entire material on record including the impugned order.

It is not disputed that the land belonging to defendant no.1 was sold in public auction and the same was purchased by the auction-purchaser Devraj Singh and consequently, the name of the defendant no.2 was entered in col. No.2 of the Khatauni for the Fasli year 1412 to 1417. In this Khatauni name of Vikram Singh does not find place. There is mention of auction sale. Before the learned Trial Court it was argued on behalf of the plaintiffs that the disputed land of co-tenure holdings and without partition of the joint property, no right accrued to the defendant no.2. The Trial Court has rightly come to the conclusion that the plaintiffs could have filed a suit for partition. The trial court on the basis of the sale-deeds rightly found that prima facie the partition of the suit property between the parties is proved.

Having gone through the entire material on record, I find that the learned Trial Court committed no infirmity or illegality in dismissing the application of the plaintiffs for temporary injunction. The appeal lacks merit and is liable to be dismissed.

The appeal is hereby dismissed. The impugned order dated 5-11-2004 is upheld. No order as to costs.

However, the Trial Court is directed to decide the Original Suit No.61 of 2003 pending between the parties on merits expeditiously, as early as possible.

(B.S. Verma, J.)

RCP